IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 24813 of 2007(D)

PETITIONER:

P.R.RADHAMANI,
FEMALE ATTENDANT (RTD)
THODUPUZHA MUNICIPALITY,
RESIDING AT PANANCHIKKATTUMATTATHIL,
KUMARAMANGALAM P.O., THODUPUZHA
IDUKKI DISTRICT.

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.S.PRASANTH (AYYAPPANKAVU)

RESPONDENTS:

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1. THE STATE OF KERALA ,REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT
SECRETARIAT,THIRUVANANTHAPURAM.

2. THE DIRECTOR OF URBAN AFFIARS,
THIRUVANANTHAPURAM.

3. THE THODUPUZHA MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
THODUPUZHA.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 24813 OF 2007 D
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Dated this the 24th August, 2007

J U D G M E N T

Petitioner approached this Court praying for quashing Ext. P12 and to direct the 1st respondent to regularise her service as Female Attendant and to sanction consequential benefits. Petitioner commenced service on provisional basis from 1981 and retired on 31-5-2005 as Female Attendant in Thodupuzha Municipality. Her request for regularisation of her provisional service was rejected by Exts. P4 and P5 and her claim for pension was considered by the authorities and it was eventually rejected by Ext. P12 order. It is in the aforesaid background this writ petition has been filed.

2. In the pleadings, the petitioner referred to Ext. P7 Govt. Order which provides for ex-gratia pension for those who are ineligible for pension and she also makes reference to Ext. P8 judgment of this Court where a similarly situated person's case was

considered and based on Ext. P8 judgment, by Ext. P9 order pension was granted. On these grounds the petitioner seeks to quash Ext. P12 and to direct the authorities to grant her consequential benefits.

3. Admittedly, the petitioner commenced her service on provisional basis and continued so until her retirement and her service was not regularised. As per the statutory provisions, only regular service will count towards pension and the provisional service will not count for pension. Therefore the claim of the petitioner for pension has no statutory backing.

4. As far as Ext. P7 Government Order is concerned, by this order the Government introduced an Ex-gratia Pension Scheme to provide relief to employees who retire from service on superannuation and are ineligible for statutory pension as per the provisions in Kerala Service Rules. This Scheme only enables the employees who rendered regular service to get ex-gratia pension and does not apply to provisional employees like the petitioner.

5. In so far as Ext. P8 judgment is concerned, as is evident from the same, the judgment was rendered in the peculiar facts and circumstances of the case and the judgment does not lay down a law of universal

application that provisional employees are entitled to pension. It may be true that following Ext. P8 ex-gratia pension may have been granted to a provisional employee. Equality is a positive concept and an order of the court cannot perpetuate an illegality. So long as the rules do not permit to grant pension for provisional employees like the petitioner, for the reason that another person has been granted the benefit by Ext. P9, the petitioner cannot claim parity with such person.

6. Since the petitioner admittedly was a provisional employee, in terms of the rules she is not entitled to pension. Ext. P7 Govt. Order also is inapplicable to provisional employees. Therefore, the rejection of the petitioner's claim by Ext. P12 is unassailable and the writ petition lacks merits.

In the result, the writ petition will stand dismissed.

ANTONY DOMINIC
JUDGE

jan/-